



October 19, 2001

REQUEST FOR PROPOSALS (RFP)

Transportation Fund for Clean Air Financial Audits

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SECTION I - SUMMARY

The Bay Area Air Quality Management District collects a surcharge on the State imposed motor vehicle registration fee. The revenues from the surcharge are distributed through the Transportation Fund for Clean Air (TFCA) to public agencies for projects to reduce air pollution from motor vehicles. Any agency receiving these fee revenues is subject to an audit of each funded project. The audit is to be conducted by an independent auditor selected in accordance with Division 2 (commencing with Section 1100) of the California Public Contract Code.

The purpose of this Request for Proposals is to solicit bids from eligible firms to conduct the required fiscal audits of projects funded by the Air District with TFCA revenues.

To respond to this RFP, an interested company should submit 2 copies of its proposal to:

Joe Steinberger, Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

A proposal must address all information requested in this RFP. A proposal may add information not requested in this RFP, but the information should be in addition to, not instead of, the requested information and format. Minority business enterprises and women's business enterprises are encouraged to submit proposals. **Any questions regarding this RFP should be directed to Joe Steinberger at voice: (415) 749-5018 or email: jsteinberger@baaqmd.gov.**

<p>Proposals must be received at the Air District offices by 4:30 PM on November 20, 2001.</p> <p>Late proposals will not be considered.</p>
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SECTION II - BACKGROUND

A. AIR DISTRICT OVERVIEW

The Bay Area Air Quality Management District was created by the California legislature in 1955 as the first regional agency to deal with air pollution in California. The District includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano, and southern Sonoma Counties.

The Legislature originally gave the District authority to regulate stationary sources of air pollution, such as factories, oil refineries, chemical plants, gasoline stations, and agricultural burning. With more recent legislation, the District was granted authority to enact certain transportation and mobile source measures.

The District is governed by a twenty-one member Board of Directors consisting of elected officials, including county supervisors, mayors, and city council members. The chief executive officer of the District is the Air Pollution Control Officer.

B. TRANSPORTATION FUND FOR CLEAN AIR

The Air District is authorized under Health and Safety Code Sections 44220 and 44242 to collect a surcharge on the State imposed motor vehicle registration fee. The revenues from the surcharge are distributed through the Transportation Fund for Clean Air (TFCA) to public agencies for specified projects and programs to reduce air pollution from motor vehicles necessary for the implementation of the California Clean Air Act of 1988 and the control strategies adopted in the *Bay Area Clean Air Plan*.

The Department of Motor Vehicles collects the surcharge and transfers the collected funds to the Air District. Up to five percent of the revenue may be used to cover the Air District's costs to administer the distribution of the fee revenues. The remainder is allocated through two portions. Sixty percent is allocated directly by the Air District (the Regional Fund), while forty percent is subvended to designated agencies within each of the nine counties within the Air District's jurisdiction (county Program Manager Funds). These nine designated agencies distribute the subvended revenues in accordance with resolutions adopted by the majority of the cities representing a majority of the population within their county, and the County Board of Supervisors.

Health and Safety Code Section 44242 requires that any agency receiving fee revenues from the Air District shall be subject, at least once every two years, to an audit of each funded project. The audit is to be conducted by an independent auditor selected by the Air District in accordance with Division 2 (commencing with Section 1100) of the California Public Contract Code. The audit shall be made available to the public and to the affected agency upon request. If the Air District determines after reviewing the audit that fee revenues have been spent inappropriately, the Air District, after an appropriate opportunity for explanation by the affected agency, including a public hearing, must withhold distribution of future fee revenues in an amount equal to those fees spent contrary to the intent of State law.

C. NATURE OF THIS RFP

This RFP sets forth minimum standards for a proposal. The proposals will be evaluated by a panel of District staff. The Air District will then execute a contract with the chosen company.

D. STATEMENT OF COMPLIANCE

Government Code Section 12990 and California Administrative Code Title II, Division 4, Chapter 5, require employers to agree not to discriminate against any employees or applicants because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age. A statement of compliance with this clause is in all District contracts.

E. MINORITY OR WOMEN-OWNED BUSINESS ENTITIES

It is the policy of the Air District to encourage participation by Minority or Women-owned Business Entities in the bidding process.

SECTION III - INSTRUCTIONS TO BIDDERS**A. GENERAL**

1. All proposals must be made in accordance with the conditions of this RFP. Failure to address any of the requirements is ground for rejection of the proposal.
2. All information should be as complete, specific, and concise as possible.
3. Proposals should include any additional information that the respondent deems pertinent to the understanding and evaluation of the bid.
4. The Air District may modify this RFP or issue supplementary information or guidelines during the proposal preparation period prior to November 20, 2001.
5. Proposals shall constitute firm offers valid for 90 days from November 20, 2001. Once submitted, proposals cannot be altered without the written consent of the Air District.
6. The Air District expects to select a contractor on or about December 19, 2001 (Board approval). The contract with the Air District should be fully executed by January 31, 2002.
7. The Air District expects, based on past experience, that no more than four months would be needed to complete the audits – through submission of the final audit reports.
8. The Air District reserves the right to reject any and all proposals.

B. BASIS OF PROPOSALS

1. The firm must be qualified according to rules and regulations of the State of California and the Comptroller of the Currency to issue the reports as described in Section IV.
2. The firm must have a background and experience in providing financial and compliance auditing services to governmental organizations.
3. Individuals assigned to the audit should be qualified to perform an audit of a government unit and be familiar with transportation projects.
4. The firm must be independent and free of conflicts of interest in discharging professional responsibilities. Independent is specifically defined in Rule 101 of the Code of Professional Conduct issued by the American Institute of Certified Public Accountants and states: "a member in public practice shall be independent in the performance of professional services as required by standards promulgated by bodies designated by Council (Council of the American Institute of Certified Public Accountants)." The Air District recognizes that prospective bidders may be

under contract to perform financial statement and compliance audits of one or more local government recipients of TFCA revenues and does not consider that circumstance as compromising the independence of such bidders.

C. SUBMITTAL OF PROPOSALS

1. Two copies of the proposal must arrive at the address specified in Section I by 4:30 P.M. on November 20, 2001.
2. Proposals received after the time and date specified will not be considered.

D. INTERVIEWS

1. At the Air District's option, the Air District may interview bidders. The interviews will be for the purpose of clarifying the proposals.
2. Submittal of new material at an interview will not be permitted.

SECTION IV - SCOPE OF WORK

A. OBJECTIVES

1. Express an opinion on whether fee revenues awarded by the Air District to other public agencies were spent on the reduction of air pollution from motor vehicles pursuant to the transportation control measures adopted pursuant to Sections 40233 and 40717 of the Health and Safety Code and that fee revenues supported projects as specified in Section 44241 of the same code. The said opinion will reflect a determination of the propriety of the expenditures incurred, not the degree of efficacy in reducing air pollution. Attachment 1 provides a list of the projects to be audited under this contract.
2. Submit to the Air District the Audit Reports described in this Section.

B. WORK STATEMENT

The selected audit firm shall perform a compliance and financial statement audit on each of the projects listed in Attachment 1. Audit guidelines and other requirements are described in Paragraphs 1 through 3 below.

1. Compliance and Financial Audit Requirements

- a. Compliance Audit - The selected audit firm shall conduct a compliance audit as required in Section IV.A. Paragraphs 1 and 2 above, subject to Government Auditing Standards, and shall prepare a report on the recipient's compliance with the terms of the applicable project funding agreement and the provisions of the TFCA [Health and Safety Code Sections 44220 through 44242]. The report must make specific reference to tests for compliance with the applicable laws and regulations in accordance with *Statement on Auditing Standards Number 74: Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance (SAS-74)*.

The test for compliance must emphasize the following requirements of the project funding agreement and TFCA -- the use of the money for the reduction of emissions from motor vehicles; the adoption of appropriate resolutions as specified in Health and Safety Code Sections 44223, 44225, and 44241; expenditure of funds within two years; use of indirect cost rates that are consistent with Air District Guidelines; and that no more than of five percent of the TFCA funds were expended on administrative costs.

- b. Financial Statement Audit - The examination of financial statements of public agencies shall be conducted as described in the AICPA's Industry Audit Guide, *Audits of State and Local Government Units*. The examination shall be conducted in accordance with generally accepted auditing standards leading to the expression of an opinion in compliance with Rule 58.1 of the State Board of Accountancy. Generally accepted auditing standards include the Statements of Auditing Standards issued by the Auditing Standards Board of the American Institute of Certified Public Accountants and the *Governmental Auditing Standard: Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* issued by the Comptroller General of the United States.

2. Other Areas of Concern

The selected audit firm shall itemize any other areas of concern with respect to the contractual, legal, administrative, or financial aspects of the grantee's implementation of the TFCA project, as such concerns may emerge during the course of the audit. The audit firm shall also provide recommendations for resolution of those concerns, to the extent that the firm has information or experience to do so.

3. Air District Support

- a. The Air District will assist the selected audit firm in locating required records, documentation and supporting information within its possession. The selected firm will be responsible for scheduling times to review material in possession of project sponsors.
- b. The Air District will provide the selected audit firm with a list of the contact person(s) for each project listed in Attachment 1.
- c. The Air District will work to ensure that the selected firm receives the cooperation from the County Program Managers and the project sponsors in the conduct of the audits.

C. DELIVERABLES

1. The auditor will issue a Summary Report highlighting for the Air District the audit process, significant findings and issues that arise during the audits, and recommendations to the Air District. This report will be sent to the Air District in draft form. Within thirty days, the Air District will provide comments on the report to the contractor. The contractor will then revise the draft report and send the Air District a final Summary Report.
2. The auditor must issue an individual report, as described below, for each County Program Manager and their sponsored projects as listed in Attachment 1. These reports will be sent in draft form to the Air District and the respective County Program Managers. A thirty day period for comment will be provided. These reports will then be revised and sent in final form to the Air District and the respective County Program Managers.
 - a. Material findings on the project sponsor's compliance with Health and Safety Code Sections 44220 through 44242 and the provisions of the *Statement on Auditing Standards No. 74 - Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance*.
 - b. Material findings on the compliance with the Funding Agreement with the Air District by the County Program Manager.
 - c. Material findings of the County Program Manager's financial statement on the TFCA revenues.

- d. Material findings discovered during the course of the examination of noncompliance with applicable laws, rules and regulations.

The auditor will provide one copy of the report (both draft and final) to the Air District and one copy (both draft and final) to the applicable County Program Manager.

SECTION V - PROPOSAL FORMAT AND CONTENTS

A. CONTENTS OF PROPOSAL

Submitted proposals must follow the format outlined below and all requested information must be supplied. Failure to submit proposals in the required format will result in the proposal being eliminated from evaluation and consideration.

1. Technical Proposal

Cover Letter - Must include the name, address, and telephone number of the company, and must be signed by the person or persons authorized to represent the firm.

Table of Contents - Clearly identify material contained in the proposal by section and page number.

Summary (Section I) - State overall approach to the audit, including the objective(s) and scope of work to be performed.

Firm Contact Information (Section II) - Provide the following information on the firm:

- Address and telephone number of office nearest to San Francisco, California.
- Name of firm's representative designated as the contact.
- Name of the project manager, if different from the individual designated as the contact.

Program Schedule (Section III) - Provide projected milestones or benchmarks for completing the audit within the total time allowed.

Firm Organization (Section IV) - Provide a statement of your firm's background and experience in providing auditing services to governmental organizations. Describe the technical capabilities of the firm, and, in particular, the firm's exposure to working with environmental regulations, if any. Provide references of other similar completed audits including contact name, title, and telephone number for the references listed.

Project Organization (Section V) - Describe the proposed management structure, program monitoring procedures, and organization of the engagement team. Provide a statement detailing your approach to the audit required by the *Statement on Auditing Standards No. 74: Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance*. Specifically address the firm's ability and willingness to commit and maintain staffing to successfully conclude the audit on the proposed schedule.

Assigned Personnel (Section VI) - Provide the following information on the staff to be assigned to the audit:

List all key personnel assigned by level and name. Provide a description of their background, along with a summary of their experience in auditing governmental agencies, auditing in general and any specialized expertise they may have. Substitution of project manager or staff will not be permitted without prior written approval of the Air District's Project Manager.

Provide a statement of the availability of staff in a local office with requisite qualifications and experience to conduct the requested compliance audits.

Provide a statement of the education and training program provided to, or required of, the staff identified for participation in the engagement, particularly with reference to governmental accounting and auditing, governmental practices and procedures, and environmental regulations.

Retention of Working Papers (Section VII) -- All working papers are the property of the Air District. Include a statement acknowledging that if your firm is awarded a contract, you will retain the audit work papers and related audit reports for a minimum period of five years.

Subcontractors (Section VIII) -- List any subcontractors that will be used, the work to be performed by them, and total number of hours or percentage of time they will spend on the project.

Conflict of Interest (Section IX) -- Address possible conflicts of interest with other clients affected by actions performed by the firm on behalf of the Air District. The Air District recognizes that prospective bidders may have contracts to perform financial statement and compliance audits for local governments and other recipients of TFCA revenues. Include a complete list of such clients for the past three years with the type of audit performed and the total number of years performing such audits for each client. The Air District reserves the right to consider the nature and extent of such work in evaluating the proposal.

Additional Data (Section X) -- Provide other essential data that may assist in the evaluation of the proposal.

2. Cost Proposal

Name and Address - The Cost Proposal must list the name and complete address of the bidder in the upper, left-hand corner.

Cost Proposal - The Cost Proposal must use the following format:

Tasks	Price
1. County Program Manager Fund Audits: field work	\$
2. County Program Manager Fund Audits: support work	\$
TOTAL COST OF PROPOSAL	\$

In addition, a list of the fully burdened hourly rates and the total number of hours estimated for each level of professional staff to be used to perform the audits must be provided in the proposal.

B. PROPOSAL SUBMISSION

All proposals must be submitted according to specifications set forth in Section V(A) - Content of Proposal and this section. Failure to adhere to these specifications may be cause for the rejection of the proposal.

Signature - All proposals should be signed by an authorized representative of the bidder.

Due Date - All proposals are due no later than 4:30 p.m., November 20, 2001 and should be directed to:

Joe Steinberger, Environmental Planner
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, California 94109

Submit two (2) complete copies of the proposal in a sealed envelope, plainly marked in the upper, left-hand corner with the name and address of the bidder and the words "TFCA Audit Proposal." Late proposals will not be accepted. Any correction or re-submission of proposals will not extend the submittal due date.

Addenda -- Air District may modify this Request for Proposals (RFP) and/or issue supplementary information or guidelines relating to the RFP during the proposal preparation period.

Grounds for Rejection - A proposal may be immediately rejected if it is received at any time after the deadline; it is not in the prescribed format; or it is not signed by an individual authorized to represent the firm.

Disposition of Proposals - All responses to this RFP become the property of the Air District.

Modification - Once submitted, proposals, including the composition of the contracting team, cannot be altered without prior written consent of the Air District. All proposals shall constitute firm offers valid for 90 days from November 20, 2001.

SECTION VI - PROPOSAL EVALUATION

An evaluation panel of Air District staff will evaluate all proposals. The panel will recommend the selection of the contractor to the Air Pollution Control Officer, who will, in turn, make a recommendation to the Air District's Board of Directors. The Board of Directors must approve the contract to carry out the work described in this RFP. An example of a typical contract used by the Air District for professional services is included in Section VII.

Proposals will be evaluated on the following criteria:

- | | |
|--|-----|
| 1. Technical expertise; size and structure of the firm, as affecting their ability to perform and complete the work in a professional and timely manner. | 40% |
| 2. References of the firm. | 20% |
| 3. Cost. | 15% |
| 4. Past experience of the firm and, in particular, experience of the audit team on similar projects of similar scope for governmental agencies. | 15% |
| 5. Responsiveness of the proposal stating a clear understanding of the work to be performed. | 10% |

The Air District reserves the right to reject any and all proposals submitted and/or request additional information.

During the selection process, the evaluation panel may wish to interview bidders. The interviews will be for clarification only. The submittal of new material will not be permitted at that time.

If two or more proposals receive the same number of points, the Air District will accept the lower cost offer.

SECTION VII - SAMPLE CONTRACT

A sample contract to carry out the work described in this RFP appears below. Attachment 1 of the contract, Scope of Work, appears above in Section IV of this RFP.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. 01-__

1. PARTIES - The parties to this Contract are the Bay Area Air Quality Management District (referred to herein as "DISTRICT") whose address is 939 Ellis Street, San Francisco, CA 94109, and [contractor] (referred to herein as "CONTRACTOR") whose address is [contractor's address].
2. RECITALS
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701(f). DISTRICT desires to contract with CONTRACTOR for services described in Attachment 1 - Scope of Work, attached hereto and made a part hereof by this reference. CONTRACTOR attests that it is well-qualified to provide such services on the terms set forth herein. DISTRICT is entering into this Contract based on CONTRACTOR's represented expertise and previous experience.
 - B. CONTRACTOR is incorporated/partnership in the State of California and is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - C. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
3. PERFORMANCE REQUIREMENTS
 - A. CONTRACTOR shall submit reports to DISTRICT as outlined in Attachment 1 - Scope of Work. DISTRICT reserves the right to review, comment on, and request changes to any report produced as a result of this Contract.
 - B. CONTRACTOR shall not engage, during the term of this contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work attached hereto.
 - C. CONTRACTOR shall be responsible for exercising the degree of skill and care customarily required by accepted professional practices and procedures subject to the DISTRICT's final approval which the DISTRICT will not unreasonably withhold. Any costs incurred due to the failure to meet the foregoing standards, or to otherwise remedy defective services, shall be the responsibility of CONTRACTOR. The CONTRACTOR's failure to achieve the performance goals and objectives stated in Attachment 1- Scope of Work, is not a basis for requesting re-performance unless work conducted by CONTRACTOR is deemed by DISTRICT to have failed the foregoing standards of performance.

D. CONTRACTOR shall ensure, through its contracts with any subcontractor(s), employees and agents performing under this CONTRACT shall abide by paragraph C above.

4. TERM - The term of this Contract is from [date] to [date], unless further extended by amendment of this Contract in writing, or terminated earlier. No work set forth in this Contract shall commence until this Contract is fully executed by all parties.

5. TERMINATION

- A. The failure or inability of any party to comply with any term or condition of this Contract, including, but not limited to, the requirements of Attachment 1 - Scope of Work, shall constitute a breach of the Contract. In addition, a substantial or continuing, or both, violation of environmental laws or regulations by CONTRACTOR, or violation by CONTRACTOR of an agreement, order, or decree resolving such a violation shall constitute a breach of the Contract. The non-breaching party shall either notify the breaching party that it must cure this breach or provide 10 business days, written notification of its intention to terminate this Contract. Notification shall be provided in the manner set forth in Section 10. The non-breaching party reserves all rights under law and equity to enforce this contract and recover any damages.
- B. The DISTRICT reserves the right to terminate this Contract for any reason and will reimburse CONTRACTOR for actual costs incurred in performance of this Contract through the effective date of termination for nonbreach. Notice for this type of contract termination shall also be 10 business days.

6. INSURANCE

- A. By [date], CONTRACTOR shall furnish the District with evidence of workers' compensation insurance for each of its employees in accordance with either California or other applicable statutory requirements.
- B. By [date], CONTRACTOR shall provide to the District (1) evidence of a comprehensive general liability insurance policy with combined single limit bodily injury and property damage coverage of one million dollars (\$1,000,000) and (2) an automobile liability insurance policy providing combined single limit bodily injury and property damage coverage of not less than one million dollars (\$1,000,000). District shall be named as an additional insured on any such liability policy, and thirty (30)-days prior written notice of cancellation modification of any such insurance shall be given by CONTRACTOR to DISTRICT, with any modifications subject to pre-approval by the DISTRICT.
- C. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.
- D. All insurance certificates shall be mailed to: Ron Raimondi, Finance Manager, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109. CONTRACTOR shall include the DISTRICT Contract Number on the face of the insurance certificate.
- E. CONTRACTOR shall provide updates upon the request of DISTRICT so that DISTRICT may ensure that there is no break or lapse in insurance coverage during the period of Contract performance. Failure to provide evidence of current coverage shall be grounds for termination for breach of Contract.

7. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, indemnify, and defend DISTRICT, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, cost, or

expenses which DISTRICT, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay by reason of any injury or property damage caused or incurred by CONTRACTOR, its employees, subcontractors, or agents, in the performance of this Contract.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for work performed under this Contract in accordance with Attachment 2 - Cost Schedule, attached hereto and incorporated herein by this reference. Payment of such compensation shall be made by DISTRICT to CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice prepared and furnished by CONTRACTOR referencing line item expenditures as listed in Attachment 2 and the amount of charge claimed. Each invoice must be prepared in duplicate on the CONTRACTOR's letterhead, must list the DISTRICT's contract number, and the CONTRACTOR's Employer Identification Number, must include documentation in accordance with Attachment 1 - Scope of Work, and must be submitted to: Ron Raimondi, Finance Manager, Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.
- B. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) CONTRACTOR's failure to provide receipts shall be grounds for DISTRICT's non-reimbursement of such charges. DISTRICT may reduce payments on invoices by those charges for which receipts were not provided.
 - ii) DISTRICT shall not pay interest, fees, handling charges, or cost of money on Contract.
- C. The total amount for which the DISTRICT may be held liable for the performance of work specified in this Contract, including any authorized travel-related expenses, shall not exceed one million five hundred thousand dollars (\$1,500,000).

9. INTELLECTUAL PROPERTY RIGHTS

- A. Title, full ownership rights, and all copyrights to any software, documents, or reports developed under this Contract shall at all times remain with DISTRICT unless otherwise agreed to in writing. Both parties to this agreement agree that such material produced under this Contract is the DISTRICT's proprietary information.
- B. Rights of Technical Data -- The DISTRICT shall have unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by CONTRACTOR under this Contract. CONTRACTOR shall have the right to use data for its own benefit.

10. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by first class U.S. mail or by delivery service, and shall be effective as of the date received.

DISTRICT: Bay Area Air Quality Management District
939 Ellis Street

San Francisco, CA 94109
Attn: [add name]

CONTRACTOR: [contractor]
[street]
[city, state, zip code]
Attn: [contact]

11. ADDITIONAL PROVISIONS Attachment 1 (_ pages) and Attachment 2 (1 page) to this Contract contain additional provisions which are expressly incorporated herein by this reference and made a part hereof as though fully set forth at this point.
12. EMPLOYEES OF CONTRACTOR
 - A. DISTRICT reserves the right to review the resumes of any of CONTRACTOR's employees selected to perform the work specified here and to disapprove CONTRACTOR's choices. CONTRACTOR warrants that it will employ no subcontractor without written approval from DISTRICT.
 - B. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay and pay for legal holidays.
 - C. CONTRACTOR, its officers, employees, agents, or representatives shall in no sense be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
13. CONFIDENTIALITY - It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner the information which CONTRACTOR obtains from DISTRICT as confidential and CONTRACTOR agrees to:
 - A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
 - B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever the contents of such information or any part thereof, or from taking any action otherwise prohibited under this paragraph.
 - C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
 - D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this paragraph. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any

third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.

- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection on such information.
- F. Prevent access to such by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this paragraph.

14. PUBLICATION

- A. DISTRICT shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from DISTRICT in connection with performance under this Contract.
- B. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.

15. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall likewise require each subcontractor to comply with this paragraph and shall include in each such subcontract language similar to this paragraph.

16. SOLICITATION OF EMPLOYEES - CONTRACTOR expressly agrees that CONTRACTOR shall not, during the term of this Contract, nor for a period of six months after termination, solicit for employment or employ, whether as an employee or independent contractor, any person who is or has been employed by DISTRICT during the term of this Contract without the consent of DISTRICT.

17. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.

18. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or DISTRICT to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.

19. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.

20. FORCE MAJEURE - Neither DISTRICT nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of

suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of DISTRICT or CONTRACTOR.

21. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
22. HEADINGS - Headings on the paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
23. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
24. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be San Francisco, California.
25. CITIZENSHIP AND ALIEN STATUS
 - A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services thereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services under this CONTRACT all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this CONTRACT to insure continued compliance with all federal statutes and regulations.
 - B. Notwithstanding paragraph A above, CONTRACTOR, in the performance of this CONTRACT, shall not discriminate against any person in violation of Title 8, U.S.C. Section 1324b.
 - C. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend and hold harmless the DISTRICT, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or DISTRICT, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment persons performing services under this CONTRACT.
26. ENTIRE CONTRACT - This Contract represents the entire agreement between the parties hereto related to CONTRACTOR providing services to DISTRICT and there are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

[contractor]

By: _____
Ellen Garvey
Air Pollution Control Officer

By: _____
[contact]
[contact's title]

Date: _____

Date: _____

Approved as to form:
Robert N. Kwong, District Counsel

By: _____